



MEMORANDUM

DATE: January 4, 2005

TO: Members of the Mayor and Council
Subcommittee on Good Government

FROM: Karen Thoreson
Assistant City Manager

SUBJECT: Repetitive Acts of Prostitution

The Good Government Subcommittee is to consider whether an ordinance, similar to the existing unruly gathering ordinance (Tucson Code Section 16-32, "Red Tag"), should be considered for passage by the Mayor and Council.

It is recommended that the Good Government Subcommittee approve forwarding this, or a similar, ordinance to the Mayor and Council for its consideration.

Properties on which repeated acts of prostitution occur, whether commercial or residential, are a blight and nuisance adversely affecting neighborhoods in which they are located as well as the City as a whole. State and local laws leave some gaps in dealing with these types of properties. State statute on abatement of bawdy houses (A.R.S. § 12-801, *et seq.*) provides that a county or a citizen may bring an action to abate but does not allow the City to do so. Unless a business is regulated under the Tucson Code, such repeated acts cannot result in suspension of the business license. Two types of businesses which are regulated are hotels and adult motels. Acts of prostitution occurring on the premises of an adult motel can lead to revocation of its license. For hotels (and motels) repeated acts of prostitution are not a basis for suspension of the license. For this group of properties, it is the rental within eight hours of a previous rental which leads to suspension of their license.

The attached proposed ordinance language regarding repeated acts of prostitution is modeled on the "Red Tag" (Unruly Gathering) Ordinance. It has provisions for posting of the property, minimum mandatory fines, and court ordered abatement. It does not require that there be convictions for those acts of prostitution in order for the ordinance to be effective.

The ordinance would be an additional tool useful to law enforcement without any increase in cost.

Courts in other jurisdictions have upheld ordinances at least as stringent as the one being proposed.

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Attachment: Proposed Ordinance Language

(a) Definitions. For the purpose of this section, unless the context otherwise requires, the following terms or phrases are defined as:

Acts of prostitution means any conduct punishable under Section 11-28 of this Code.

Owner means any owner, as well as any agent of an owner acting on behalf of the owner to control or otherwise regulate the occupancy or use of the property.

Premises means the property that is the site of persons involved in acts of prostitution. For residential properties, premises means the dwelling unit or units where acts of prostitution occur.

Permitting means allowing or taking no affirmative steps to prevent.

(b) Permitting the commission of repetitive acts of prostitution illegal. If three or more acts of prostitution are charged against any person or persons within a 30 day period who reside, rent, lease or otherwise occupy any residential or commercial property, it is unlawful and constitutes a civil infraction.

(c) Notice of repetitive acts of prostitution; posting; removal of notice prohibited; right to contest posting.

(1) Contents of notice. The premises at which the acts of prostitution occur shall be posted with a notice stating:

a. That repetitive acts of prostitution have occurred at the premises;

b. The dates of the acts of prostitution;

c. That any subsequent acts of prostitution committed on the same premises within a one hundred eighty-day period shall result in liability for the penalties provided in this section. The party liable is any owner of the property, occupant or tenant of the premises or any agent of an owner acting on behalf of the owner at which the subsequent act of prostitution occurred.

d. The right to contest the posting as provided in subsection (c)(4) of this section.

(1) Posting requirements. Premises shall be posted with a notice as provided in this section each time repetitive acts of prostitution occur. The owner, occupant or tenant of the premises, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display. In the event that a premises is already posted at the time of a subsequent posting, the one hundred eighty-day period from the date of the existing posting shall be extended to one hundred eighty days from the date of the subsequent posting. Once a premises is initially posted as a result of repetitive acts of prostitution and the conduct causing the posting of the notice ceased, a resumption of repetitive acts of prostitution on the premises resulting in another police response shall constitute a new and separate charge for purposes of this section.

(2) Removal of notice prohibited. The owner, occupant, or tenant of the posted premises shall be responsible for ensuring that the notice is not removed, defaced, or concealed. The removal, defacement, or concealment of a posted notice is a civil infraction carrying a penalty of a minimum, mandatory one hundred dollar fine, in addition to any other penalties which may be imposed under this section.

(3) Right to contest posting.

a. An owner, occupant, or tenant of the posted premises may contest the posting of the notice by filing a written petition for review with the civil infractions division of the city court requesting that the court determine whether justification existed for posting of the notice under the provisions of this section. The petition must be filed within ten days after the posting of the notice or, if the notice is given by mail, within fifteen days after the date of the mailing of the notice, and not thereafter. The court shall set a time and date for a hearing to be held no later than fifteen days after receipt of the written petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. At the hearing, the city has the burden of proving by a preponderance of evidence that the posting of the notice was justified pursuant to the provisions of this section.

b. An owner of a posted premises, at any time after the posting or the mailing of the notice, may petition the court for an order directing the removal of the notice on the grounds that the owner has taken reasonable and necessary actions, such as evicting a tenant responsible for the violation, providing additional property security or screening of new tenants to prevent the occurrence of a subsequent acts of prostitution at the posted location. The court shall set a time and date for a hearing to be held no later than fifteen days after receipt of the petition and shall notify both the petitioner and the criminal division of the city attorney's office of the hearing date. At the hearing, the petitioner has the burden of proving by a preponderance of evidence that the petitioner has taken reasonable and necessary actions to prevent the occurrence of a subsequent acts of prostitution. This petition process is not available to an owner who was present at the acts of prostitution previously charged and engaged in conduct resulting in criminal charges.

(d) Notification of property owner.

(1) Notification of the posting of the notice of repetitive acts of prostitution shall be mailed to any property owner at the address shown on the Pima County Property Tax Assessment Records. The notification shall advise the property owner that any subsequent acts of prostitution within one hundred eighty days on the same premises shall result in liability of the property owner for all applicable penalties as provided in this article. Notification shall be made by certified mail. The return receipt shall be prima facie evidence of service.

(2) Additionally, notice shall be provided to an agent of the owner who controls or regulates the use of the premises, if known. Notice to the owner's agent may be provided by hand delivery or by certified or regular mail sent to the agent's last known address.

(3) The failure to serve notice to any person described in this subsection shall not invalidate any citation or other proceedings as to any other person duly served, or relieve any such person from any duty imposed by this section.

(e) Permitting repetitive acts of prostitution a civil infraction; parties responsible. Permitting repetitive acts of prostitution is unlawful and constitutes a civil infraction. The following parties, if found responsible for such an infraction, are liable for the penalties provided in subsection (f)(1) and (f)(2):

(1) The owner of the property where the repetitive acts of prostitution occurred, if either:

- a. The owner was present when the property was posted; or
- b. Notification of posting was mailed or delivered to the owner of the property per subsection (d), and the subsequent act of prostitution occurred within 180 days after the mailing of such notification.

(2) The occupant or tenant of the property where the subsequent acts of prostitution occurred.

Nothing in this section shall be construed to impose liability on the owner, occupant, or tenant of the premises constituting acts of prostitution, for the conduct of persons who are in attendance without the express or implied consent of the owner, occupant, tenant, or sponsor, as long as the owner, occupant, tenant or sponsor has taken steps reasonably necessary to prevent acts of prostitution or to exclude the uninvited persons from the premises, including owners who are actively attempting to evict a tenant from the premises. Where an invited person engages in unlawful conduct which the owner, occupant, tenant or sponsor could not reasonably foresee and could not reasonably control without the intervention of the police, the unlawful conduct of the person shall not be attributable to the owner, occupant, tenant or sponsor for the purposes of determining liability under this section.

(f) Penalties.

(1) Repetitive acts of prostitution. The penalty for a party found responsible for repetitive acts of prostitution, as provided in subsection (e), shall be a minimum mandatory fine of one thousand dollars.

(2) Subsequent acts of prostitution. The penalty for a party found responsible for the occurrence of a subsequent acts of prostitution, as provided in subsection (f), shall be a minimum mandatory fine of one thousand dollars for a first violation, and a minimum mandatory fine of two thousand five hundred dollars for each second and subsequent violation.

(3) Abatement. The civil fines provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of repetitive acts of prostitution. The court shall also enter an order of abatement against a party found responsible for a violation of this section pursuant to Chapter 8 of the Tucson Code.

(g) Enforcement. The police department is authorized to enforce the provisions of this section whether enforcement is initiated by a complaint from a member of the public or resulting from investigation initiated by the police department. The complaining member of the public, if any, shall not necessarily be required to appear in court before a violator may be found responsible.